



IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

Legislative Services Agency

August 2, 2006

2006 Interim No. 6

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Iowa Legislative Interim Calendar and Briefing is published by the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

August

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Tuesday, August 8, 2006

Administrative Rules Review Committee

9:00 a.m., Room 22, Statehouse

Monday, August 14 and Tuesday, August 15, 2006

Government Oversight Committee

Monday at 11:00 a.m. and Tuesday at 9:00 a.m., Room 102—Supreme Court Consultation Room, Statehouse

Thursday, August 17, 2006

Capital Projects Committee of the Legislative Council

9:00 a.m., Room 22, Statehouse

Monday, August 21 and Tuesday, August 22, 2006

Government Oversight Committee

Monday at 11:00 a.m. and Tuesday at 9:00 a.m., Room 102—Supreme Court Consultation Room, Statehouse

Wednesday, September 13, 2006

Fiscal Committee of the Legislative Council

11:00 a.m., Room 22, Statehouse

September

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DISTRIBUTION OF CALENDAR

In order to achieve savings in mailing and printing costs, beginning in July, the 2006 Interim Calendar and Briefing will primarily be distributed by electronic mail and Internet posting. The Internet site to access PDF versions of the publication is: <http://www.legis.state.ia.us/Current/Interim/>

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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

Location: Room 22, Statehouse

Date & Time: Tuesday, August 8, 2006, at 9:00 a.m.

Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

Agenda: Published in the Iowa Administrative Bulletin <http://www.legis.state.ia.us/Rules/Current/Bulletin/>.

Government Oversight Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Location: Room 102, Statehouse

Dates & Times: Monday, August 14, 2006, at 11:00 a.m.; and Tuesday, August 15, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764

Agenda: To be announced.

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>

Capital Projects Committee of the Legislative Council

Chairperson: Senator Thomas Courtney

Vice Chairperson: Representative Libby Jacobs

Location: Room 22, Statehouse

Date & Time: Thursday, August 17, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rachele Hjelmaas, Legal Services, (515) 281-8127; John Pollak, Legal Services, (515) 281-3818; Dave Reynolds, Fiscal Services, (515) 281-6934

Agenda: Updates on building usage at the Capitol Complex and other information from the Department of Administrative Services.

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=45>

Government Oversight Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Location: Room 102, Statehouse

Dates & Times: Monday, August 21, 2006, at 11:00 a.m.; and Tuesday, August 22, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764

Agenda: To be announced.

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>

Fiscal Committee of the Legislative Council

Co-chairperson: Senator Robert Dvorsky

Co-chairperson: Representative Scott Raecker

Location: Room 22, Statehouse

Date & Time: Wednesday, September 13, 2006, at 11:00 a.m.

Legislative Services Agency Contacts: Mike Goedert, Legal Services, (515) 281-3922; John Pollak, Legal Services, (515) 281-3818; Holly Lyons, Fiscal Services, (515) 281-7845; Sue Lerdal, Fiscal Services, (515) 281-7794; Dave Reynolds, Fiscal Services, (515) 281-6934

Agenda: To be announced.

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=46>



BRIEFINGS

INFORMATION REGARDING RECENT ACTIVITIES

GOVERNMENT OVERSIGHT COMMITTEE

July 18 and 19, 2006

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Overview. The primary focus of the meetings concerned continued questioning relating to the Central Iowa Employment and Training Consortium (CIETC).

CIETC Inquiry. The Committee continued its inquiry relating to CIETC with testimony from the following individuals:

State Audit of CIETC. Mr. David Vaudt, Auditor of State, was accompanied by Ms. Tami Kusian, Deputy Auditor of the Performance Investigation Division, State Auditor's Office. Mr. Vaudt discussed issues involving audit procedures and controls and the limits of an audit when managers conspire to deceive the auditor. Mr. Vaudt discussed the integrity of CIETC officials and the degree of oversight performed by the CIETC board of directors (board), also referred to as Local Elected Officials, and Iowa Workforce Development.

Mr. Vaudt discussed the employment in his office of Ms. Deborah Dessert, who is affiliated with the unit referred to as Professional Development. Ms. Dessert's husband is Mr. John Bargman who served as CIETC's Chief Operating Officer during the period of investigation. In response to a number of questions, Mr. Vaudt stated that Ms. Dessert's duties involved training and recruitment and that she had not been informed about the state audit of CIETC. He stated that his office is in contact with Iowa Ethics and Campaign Disclosure Board, the Iowa Accountancy Examining Board, and the American Institute of Certified Public Accountants. He noted that Ms. Dessert began working in the office in January 2005 with the understanding that she would wind up her consulting work in approximately six to 12 months. He also noted that during this period Ms. Dessert took leave without pay in order to perform consulting work which included working for CIETC. Mr. Vaudt stated that in November 2005 Ms. Dessert informed him that Mr. Bargman was the subject of an investigation. Mr. Vaudt stated that Ms. Dessert remains a paid employee of his office and that he is awaiting the results of ongoing investigations in order to take any necessary disciplinary action. Committee members doubted Ms. Dessert's testimony that she did not question Mr. Bargman's level of compensation while he served at CIETC in calendar year 2005 during the period when he earned \$152,000 in salary and \$207,000 in supplemental wage payments. Several members expressed concern about Ms. Dessert's continued employment at Office of State Auditor.

Mr. Vaudt discussed the payment of bonuses to state employees, noting that bonus payments may be an important incentive to attract and retain valuable employees. Members discussed an inquiry made to Mr. Vaudt by Ms. Cynthia Eisenhower, Chief of Staff for Iowa Governor Tom Vilsack, regarding the use of \$200,000 deposited in an economic development foundation. The moneys were designated for paying expenses associated with hosting the National Governors Association's annual summer meeting in 2005. Mr. Vaudt stated that he expressed concern about the appropriateness of using remaining moneys for the payment of bonuses. Mr. Vaudt also discussed an issue regarding the use of moneys earned from contributions made by members of the Iowa State County Treasurers Association and which are managed by Polk County pursuant to a 28E agreement (see Iowa Code Chapter 28E). Mr. Vaudt stated that according to the terms of an amended agreement, excess earnings are to be distributed to the participating counties.

Corporate Law Overview. Mr. Willard L. Boyd III, a member of the Nonprofit Corporations Committee of the Business Law Section of the Iowa State Bar Association, is an attorney with the Des Moines law firm of Nyemaster, Goode, West, Hansell & O'Brien, P.C. Mr. Boyd discussed the provisions of the Revised Iowa Nonprofit Corporation Act (RINCA) codified in Iowa Code Chapter 504 and which replaced the Iowa Nonprofit Corporation Act (INCA) codified in Iowa Code Chapter 504A. According to Mr. Boyd, RINCA incorporates many of the recent amendments to the Iowa Business Corporation Act (which includes updates to the Model Business Corporation Act) codified in Iowa Code Chapter 490. Mr. Boyd referred the Committee to a publication entitled "The Iowa Principles and Practices for Charitable Nonprofit Excellence" developed by the Iowa Governor's Nonprofit Tax Force. Mr. Boyd noted that RINCA addresses many areas relating to directors and officers that are not addressed in INCA, including duties imposed on directors and officers of nonprofit corporations. Generally, RINCA adopts the duty of care standard set forth in the Iowa Business Corporation Act (Iowa Code Sections 504.831 and 504.843). RINCA also includes a provision addressing conflict of interest transactions that is based on the provision contained in the Iowa Business Corporation Act (Iowa Code Section 504.833). Mr. Boyd noted that nonprofit corporations are also governed by Internal Revenue



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Service regulations governing nonprofit corporations which seek to retain a tax-exempt status under Internal Revenue Code Section 501(c)(3). In addition, a nonprofit organization is governed by the so called Sarbanes-Oxley Act (the Public Company Accounting Reform and Investor Protection Act of 2002) as enacted in Pub. L. No. 107-204, 116 Stat. 745, which sets record retention and whistleblower protection requirements for nonprofit organizations, and provides good practice for nonprofit organizations such as the requirement of an audit committee.

Mr. Boyd noted that CIETC was not organized as a nonprofit corporation but as an Iowa Code Chapter 28E organization. Mr. Boyd noted that generally under principles of common law, some duty of care and duty of loyalty exists. A duty of care involves exercising responsibilities in good faith and diligence, attention, care and skill (see Iowa Code Section 504.831) and is satisfied by attending board meetings regularly, entering discussions, reading minutes, learning about the organization's programs, maintaining a careful oversight of finances, and questioning unclear or troubling activity. A duty of loyalty involves placing the interests of the organization before a director's private interests (see Iowa Code Section 504.833). According to Mr. Boyd, conflicts of interests are managed rather than entirely avoided, approved by a vote of disinterested board members after full disclosure. He also noted that unique to directors and officers of nonprofit corporations is a duty of obedience, including by carrying out the purposes and mission of the nonprofit organization, complying with federal and state law applicable to nonprofit organizations, and complying with the organization's governing documents (articles of incorporation and bylaws).

Attorney General's Office. Mr. Grant Dugdale, Assistant Attorney General in the Licensing and Administrative Law Division, representing Iowa Workforce Development, was accompanied by Mr. Eric Tabor, Chief of Staff. Mr. Dugdale noted that the federal government is implementing criminal and civil investigations of matters connected to CIETC. The Office of Attorney General is cooperating with federal authorities with the goal of facilitating the recovery process. He estimated that recovery could take up to 38 months with an amount in dispute between \$1.2 and \$1.5 million.

Specifically, Mr. Dugdale discussed two federal programs: (1) The Workforce Investment Act (WIA) funded by the United States Department of Labor and (2) The PROMISE JOBS Program funded primarily by the United States Department of Health and Human Services. According to Mr. Dugdale, each program is governed by different funding procedures and standards. He stated that WIA provides a scheme for strong local control and accountability, but does not have stringent conflict of interest prohibitions. He noted that WIA reflects strong preference for local control; without a right for strong state involvement. The membership of Local Elected Officials (in the case for Region 11, Boone, Dallas, Jasper, Madison, Marion, Story, Polk, and Warren Counties) as independent taxing authorities are solely liable for misused moneys payable from moneys not attributable to federal grants and according to a formula which prorates each member's liability. The PROMISE JOBS Program is funded as part of the Temporary Assistance for Needy Families Program which relies upon a more traditional scheme in which the State of Iowa is the grant recipient and therefore liable for mismanagement of moneys. However, under a 28E agreement between the State of Iowa and CIETC, the state is entitled to be reimbursed for misappropriated moneys by the membership of Local Elected Officials according to the same formula used to assign liability under WIA. Mr. Dugdale noted that political subdivisions may be in the best position to bring actions for indemnification against individuals involved in mismanaging moneys.

According to Mr. Dugdale, the issue of overpaid salaries will be resolved based on whether the compensation payments were reasonable. He noted that bonuses are frozen while the Des Moines Area Community College (DMACC) is temporarily managing the organization. He also commented that there is an evaluation of the CIETC compensation structure in order to establish a demonstrative factual basis for a revised compensation structure and which may involve decreasing and increasing salaries. He also noted that Iowa Workforce Development (IWD) has drafted a contract which limits reimbursement to 120 percent of an equivalent state position. Members expressed some concern that salaries not be increased at this point. Mr. Dugdale also addressed issues relating to bonds held by individual board members, but emphasized that the political subdivisions which are members of the organization are liable for reimbursing the United States government and the State of Iowa.

Private Audit of CIETC. Mr. Alan Kincheloe of the accounting firm Faller & Kincheloe, P.C., was accompanied by Mr. Roscoe A. Ries, Jr., attorney at law from the law firm Whitfield & Eddy P.L.C. Mr. Kincheloe declined to give an opening statement but answered questions from Committee members. Mr. Kincheloe referred to a letter addressed to the Committee dated May 23, 2006, which is on file with the Legislative Services Agency. He noted that Mr. Archie



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Brooks was the board's chairperson and discussed the appropriateness of accepting Mr. Brooks' verbal authorization as evidence of the board's approval of compensation paid to CIETC employees. He also noted that Ms. Sherry Howard, Secretary/Treasurer of the board, regularly visited CIETC offices to review and approve all invoices for payment. Mr. Kincheloe stated that personnel from his firm were at the CIETC premises in October 2005 and had interviewed Ms. Howard. He explained that the purpose of the audit was to determine the accuracy of the organization's financial statements (whether they were materially correct), and emphasized that the audit was not intended to pass judgment regarding the appropriateness of compensation paid to employees as long as the compensation amounts were recorded in the organization's general ledger, approved by the organization's board of directors, and were made in accordance with the organization's contracts. He also stated that the United States Department of Labor (DOL) had conducted an analysis of CIETC during 2004 and had reviewed a draft of employment contracts. According to Mr. Kincheloe, DOL approved a draft contract with salary amounts left blank. He also noted that his firm had confirmed with a DOL representative in a telephone interview that CIETC management was acting in accordance with federal requirements. Mr. Kincheloe stated that he did not believe that the audit had revealed improprieties necessary to notify the board or the Office of State Auditor.

Mr. Kincheloe stated that his firm was aware that compensation amounts paid to CIETC employees were high, and assumed that Mr. Brooks was authorized to approve the expenditure of supplemental wage payments to CIETC employees. He noted that employment contracts were not effective during the period of the audit. Mr. Kincheloe acknowledged that personnel from his firm did not witness Ms. Howard routinely reviewing invoices, did not verify that Mr. Brooks' signatures authorizing supplemental wage payments were genuine, did not verify that DOL had approved the compensation amounts, did not know if his firm had reviewed the organization's bylaws to determine if Mr. Brooks had the requisite authority to approve supplemental wage payments, did not aggregate the amount of supplemental wage payments received by CIETC employees, and did not raise the issue of supplemental wage payments to the board during the firm's annual report and presentation to the board. He noted that his firm had reviewed board minutes but was not certain if compensation was mentioned in the minutes. He believed that his firm may have interviewed other board members, which may have included Ms. Howard, regarding the compensation amounts paid to CIETC employees, but that he could not be certain without reviewing the firm's working documents.

Practices by the Secretary/Treasurer. Ms. Sherry Howard, an administrative officer for the Story County Board of Supervisors, is designated representative serving on the board and has served as the Secretary/Treasurer for the board since January 2003. Ms. Howard stated that during the period of the investigation she spent approximately four hours a month performing her duties as a board member and officer, including the time spent attending board meetings. She stated that initially she routinely signed each invoice required to be paid, but that in July 2003 Ms. Ramona Cunningham and Mr. Bargman informed her that the State of Iowa was installing a new accounting system and that she would follow a new procedure which required her to sign a blank sheet of paper authorizing a log of payments which had already been paid, and after that time she no longer reviewed individual invoices. According to Ms. Howard, she assumed that these expenditures included operational expenses and did not include payroll payments, but believes that they may have included credit card expenses. Ms. Howard stated that it never occurred to her that the new process was inappropriate. Ms. Howard also stated that she had nothing to do with the preparation or submission of financial documents to the board which was a duty performed by Ms. Cunningham. Ms. Howard stated that she had no knowledge of employee compensation amounts and that no one had interviewed her about the practice of approving supplemental wage payments. She stated that the issue of compensation was not raised by Faller & Kincheloe, P.C., during their presentation and report to the board.

Financial Reforms and the Future of CIETC. Ms. Mary Gottschalk of MCG Strategic Services provided a brief opening statement to the Committee. Ms. Gottschalk described her career positions, and stated that her firm, in cooperation with DMAACC, had been retained by the board on an interim basis to review and establish accepted administrative and financial practices for the organization, including financial management and control structures. She is to receive \$7,000 per month in compensation. She estimated that CIETC currently employs 40 persons who are directly managed by the organization. Ms. Gottschalk stated that her firm is engaged in a comprehensive review and reconciliation of all salaries of CIETC positions which compares the salaries of comparable positions within IWD. Ms. Gottschalk noted that performance evaluations were irregularly conducted and often were not seriously completed.



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She commented that in some cases salaries were higher than comparable positions and in other cases salaries were lower than comparable positions. Committee members discussed the appropriateness of immediately increasing position salaries. Ms. Gottschalk believed that the number of open senior managerial staff positions would be reduced.

Ms. Gottschalk also discussed CIETC's accounting program and control systems which were developed by Ms. Desert. She commented that FundWare is a standard accounting program which could be developed to aggregate amounts for standard business categories including payroll and operational expenses, but that CIETC's system was not developed to provide those aggregate amounts, to aggregate such amounts was a time-consuming exercise, and that such a system would be difficult for an auditor to examine financial records.

Ms. Gottschalk stated that the board (Local Elected Officials) and the Regional Workforce Investment Board would meet on July 21 in compliance with a deadline set by Mr. Dave Neil, Director of IWD, who has expressed a strong desire to award a contract for the management of the PROMISE JOBS Program to CIETC under new management or another entity presumably selected through an RFP process by September 1, 2006. She noted that without the contract to manage the PROMISE JOBS Program, CIETC would no longer be a viable organization.

Procedural Business. Committee members engaged in a general discussion of the future direction of the Committee relative to CIETC. Members expressed interest in considering more information regarding the use of \$200,000 deposited in an economic development foundation to support executive branch salaries, but no decision was made.

Additional Information. Committee meetings involving CIETC are recorded, and can be linked via the opening page of the General Assembly's Internet homepage. The website address for the meeting recordings is: http://www4.legis.state.id.us/lfb/SubCom/related_links/Oversight_Recordings.html.

Next Meeting. The meetings scheduled for Monday, July 24, and Tuesday July 25, 2006, and Monday, July 31, and Tuesday, August 1, 2006, were canceled. The next meeting is scheduled for Monday, August 14, and Tuesday, August 15, 2006.

LSA Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Adkisson, Legal Services, (515) 281-3884; Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764

Internet Page: <http://www3.legis.state.id.us/ga/committee.do?id=41>

CAPITAL PROJECTS COMMITTEE OF THE LEGISLATIVE COUNCIL

July 19, 2006

Chairperson: Senator Thomas Courtney

Vice Chairperson: Representative Libby Jacobs

Overview. The Department of Administrative Services (DAS) presented information relating to Capitol complex parking issues, the West Capitol Terrace Project, and the acquisition of additional land for the Capitol complex grounds.

Capitol Complex Parking. Ms. Mollie Anderson, Director of DAS, provided information to the Committee requested by the Legislative Council during the Council's June 16, 2006, meeting concerning the parking situation at the Capitol complex. The information presented included a review of current parking facilities including the state parking garage at East Grand and Pennsylvania Avenues that opened in February 2003, information concerning the permanent relocation of the DAS vehicle fleet, and information pertaining to both public, employee, and handicapped parking at the Capitol complex. Ms. Anderson noted that there are no long-term plans to provide tunnel access to any of the parking locations on the Capitol complex grounds. Ms. Anderson stated that DAS is currently working with Grubb & Ellis, a real estate consultant, to locate property close to the Capitol complex to find a permanent location for the state vehicle fleet which includes both public and private land acquisition considerations.

West Capitol Terrace Project/Land Acquisition. Ms. Anderson reported that removal of the parking lots west of the Capitol and construction of the Central Plaza in that same space (phase one of the West Capitol Terrace Project) began on July 17, 2006. This first phase is expected to be completed by June 2007 in time for the Hy-Vee Triathlon, which is scheduled to end at the west steps of the Capitol. Ms. Anderson presented information concerning three properties located at the west end of the West Capitol Terrace project area at the intersection of East 7th and East Locust Streets that are being considered for acquisition by DAS to complete the West Capitol Terrace Project. She stated that the owners of all three properties at 707, 709, and 711 E. Locust are private owners. The property located



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(Capital Projects Committee of the Legislative Council continued from Page 6)

at 709 E. Locust is an 1880s row house and possibly the only surviving row house in the Capitol complex area. The current owner of the row house would like to see the building preserved and DAS has suggested this building could be used as the State Capitol's Visitors Center as an alternative to using the Carriage House on Des Moines Street. Ms. Anderson stated that the General Assembly appropriated \$500,000 to acquire these properties, but that additional resources are needed. She suggested that a certain parcel of land south of the Capitol building (land at the foot of the popular sledding hill) be appraised to try to negotiate a land swap deal for one or more of the properties located at the foot of the West Capitol Terrace Project.

Additional Property Acquisition Options—Mercy Capitol Hospital Campus and Capitol Hill Lutheran Church.

Ms. Anderson stated that Mercy Capitol Hospital, located at E. 12th and Des Moines Streets, is interested in selling the hospital building. Ms. Anderson indicated that DAS wants to continue to have discussions with Mercy Capitol representatives and is interested in exploring what this building and other buildings located on the Mercy Hospital Campus may be used for by the state if purchased by DAS, as well as the value of the assets, potential revenue streams for the state, and the value of the frontage property. Ms. Anderson also discussed a DAS proposal to purchase the Capitol Hill Lutheran Church located at 511 Des Moines Street.

Committee Action. Members of the Committee agreed by motion to support DAS in requesting the City of Des Moines to research opportunities for providing shuttle service for the general public to the Capitol complex during the legislative session, in making arrangements to have property appraised to negotiate a land swap deal for one of the three buildings at the foot of the West Capitol Terrace Project, and to work to preserve the row house building located at 709 E. Locust with the possibility of housing a state visitors center in the building.

Van Tour. Upon adjournment, DAS provided members of the Committee and legislative staff a driving tour of the Capitol complex grounds including parking areas.

Next Meeting. The next meeting of the Capital Projects Committee will be held on Tuesday, August 17, 2006, in Committee Room 22 of the Statehouse at 9:00 a.m.

LSA Contacts: Rachele Hjelmaas, Legal Services, (515) 281-8127; John Pollak, Legal Services, (515) 281-3818

TEACHER PAY-FOR-PERFORMANCE COMMISSION

July 24, 2006

Background. The General Assembly passed House File 2792 on May 3, 2006. The Act established a Pay-for-Performance Program and allocated to the Department of Management \$1 million for FY 2006-2007, \$2.5 million for FY 2007-2008, and \$5 million for FY 2008-2009 for the program from moneys appropriated for the Student Achievement and Teacher Quality Program. The Act established a Pay-for-Performance Commission as a part of the executive branch and set forth the membership and duties of the Commission. Of the amount allocated for FY 2006-2007, the Act distributes \$150,000 to the Institute for Tomorrow's Workforce (ITW), created pursuant to Code Section 7K.1, for its activities. While the Governor approved much of the language of H.F. 2792 regarding the program, on June 1, 2006, the Governor item vetoed portions of Section 27, subsections 1, 4, and 5 of the Act, which related to membership on the Commission, staffing for the Commission, the system for measuring student achievement to be developed by the commission, and a prohibition against individual salary adjustments for teachers who do not demonstrate a satisfactory level of performance under the program, and to directions to Department of Education (DOE) to create a teacher remediation program. The item veto message stated that the language was not part of an agreed upon negotiation and is too prescriptive.

Also on June 1, 2006, the Governor issued Executive Order Number 48, directing ITW to propose a design for a pay-for-performance program and conduct a study of the design as provided in H.F. 2792, Section 27. The order requires that the study measure the cost and effectiveness in raising student achievement of a compensation system that provides financial incentives based on student performance. The order apparently selects the institute to perform the statutory duties of the Commission, to propose the design for a pay-for-performance program and to conduct the study, by stating the following: the General Assembly created the institute in the previous year to provide a long-term forum for bold, innovative recommendations to improve Iowa's education system to meet the workforce needs of Iowa's new economy; the institute is tasked with reviewing the state's education accountability measures and identifying effective education structure and delivery models that promote optimum student achievement; the institute has recommended that Iowa increase teacher salaries and complete the state's commitment to a bold new professional teacher performance and compensation model that rewards educators for their own knowledge, skills,



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(Teacher Pay-for-Performance Commission continued from Page 7)

and practices that prepare students for the 21st century; and that the institute's membership is broad-based and reflects the awareness that meaningful and lasting educational change requires sustained support and collaboration from leaders in business, industry, government, and education.

Commission Membership. The Governor appointed the following individuals to the commission: former University of Northern Iowa President Dr. Robert Koob, Iowa State Education Association Executive Director Jan Reinicke, Department of Education Executive Director Judy Jeffrey, Jefferson-Scranton Community School District Superintendent Michael Haluska, and retired Clarke Community School District Superintendent Mr. Steve Waterman.

Organizational Business. During this, the Commission's initial meeting, the Commission unanimously approved as co-chairpersons Mr. Waterman and Ms. Reinicke. DOE will provide staffing for the Commission. Mr. Gary Dickey, Jr., General Counsel, Governor's Office, provided a review of H.F. 2792 and Executive Order No. 48 and outlined a proposed 28E agreement between the Commission, the Iowa Department of Management, and ITW. The agreement provides that each party shall be considered a governmental body subject to the provisions of Iowa Code Chapters 21 (Open Meetings) and 22 (Open Records). Commission members unanimously approved the agreement and stated that it will be a responsibility of the Commission to meet monthly and to provide input to ITW. The agreement provides for four payments of \$197,500 (for a total of \$790,000 by December 15, 2006) to ITW for studying and designing the teacher compensation/pay-for-performance program. It was noted during the meeting that H.F. 2792 separately directs ITW to continue its work on a new educational delivery system plan. The Commission set dates for 10 meetings through May 17, 2007. Co-chairperson Waterman asked that DOE provide an outline of the \$60,000 budgeted for the Commission's administrative costs.

LSA Monitor: Kathy Hanlon, Legal Services, (515) 281-3847

INSTITUTE FOR TOMORROW'S WORKFORCE

July 27, 2006

Background. See the above briefing regarding the Teacher Pay-for-Performance Commission for related background information regarding the Institute for Tomorrow's Workforce (ITW). The Commission, the Department of Management, and the institute recently entered into a Chapter 28E agreement under which ITW agrees to conduct a study relating to teacher and staff compensation that contains a pay-for-performance component. All parties to the agreement are considered governmental bodies subject to the open meetings and open records laws. The institute will present its final recommendations to the Commission by January 2, 2007.

Updates. Co-chairperson Mr. Marvin Pomerantz announced that the institute has nearly met the match requirement for the state funds authorized under H.F. 2792 for purposes of ITW's activities. He observed that the Commission will use the \$150,000 in state funds for system performance in accordance with the direction established under Section 31 of H.F. 2792, which requires ITW to develop an Iowa education efficiency and improvement plan, the goal of which is to establish a new educational delivery system.

RFP Presentations. Five of eight consultants who have submitted proposals to conduct the study and design a pay-for-performance program presented their proposals either in person or telephonically during the meeting. Presenters included representatives for CNA Corporation (in conjunction with the Institute for Education Leadership); Augenblick, Palaich and Associates, Inc.; the National Institute for Excellence in Teaching; Learning Point Associates; and the Education Development Center, Inc. MGT of America, the Iowa Association of School Boards Foundation, and Operation Public Education submitted proposals, but did not make presentations during the meeting.

Discussion and Final Vote. A majority of members voted to conduct a closed meeting in order to discuss the proposals. In open session, the members unanimously approved a motion to authorize the executive committee to negotiate a contract with Learning Point Associates to act as the lead consultant.

Next Meeting. The next meeting will take place on August 22, 2006, and is tentatively scheduled to begin at 10 a.m. at Farm Bureau in West Des Moines.

LSA Monitor: Kathy Hanlon, Legal Services, (515) 281-3847

LEGAL UPDATES

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of



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a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE: Correction of Child Abuse Information – Agency and Judicial Jurisdiction

Filed by the Iowa Supreme Court

Robert James Grant v. Iowa Department of Human Services No.66/04-114

July 14, 2006

http://www.judicial.state.ia.us/Supreme_Court/Recent_Opinions/20060714/04-1114.pdf?search=04-1114#_1

Overview. The Department of Human Services (DHS) dismissed an application to correct a child abuse report on the grounds of issue preclusion. This legal doctrine means, for civil matters, that if a fact, question, or matter has been conclusively settled by judgment rendered on the merits in a court of competent jurisdiction, it is considered to be conclusively settled and cannot be relitigated in any future action. The district court affirmed the DHS decision. The Iowa Supreme Court reversed the district court judgment and remanded the case for further proceedings.

Background Facts. The appellant, the father in this case, was involved in a divorce and custody proceeding regarding his two children. While the marriage dissolution proceeding was pending, the children's mother requested and received a protective order providing for the children's exchange for visits with the father to be made at a neutral site. One of the children alleged he was physically abused by the father during a visitation and the incident was reported to DHS. DHS performed a comprehensive child abuse assessment and determined the incident met the definition of child abuse and DHS' report of the incident was placed in the state child abuse central registry. Based on the incident, the mother filed an application to modify the terms of the visitation to be limited to supervised visitation. The district court modified the visitation in December 2001 and found that the incident with the child "took place" and that the father demonstrated inappropriate anger that endangered the children.

In March 2002, the appellant filed a statement with DHS claiming the child abuse report and assessment were erroneous and requesting the report be changed from founded to not confirmed. DHS denied the correction request based upon the doctrine of issue preclusion and the appellant sought review through the administrative law process. The administrative law judge dismissed the request, the dismissal was adopted by DHS as a final agency action, and the district court affirmed the agency action based on issue preclusion.

Analysis:

Appeal Claims. The father appealed, claiming that application of the doctrine of issue preclusion was in error on three grounds. First, the father claimed there was not a connection between the modification-of-visitation proceeding in the district court and the request to the agency to correct the child abuse information. Second, he claimed that issue preclusion did not apply because a statute gave him a right to an evidentiary hearing to correct the abuse report. Finally, he claimed issue preclusion did not apply because the statute specifically granted jurisdiction to DHS to correct child abuse assessments reports.

Jurisdiction. The Iowa Supreme Court noted that in a previous decision involving the state Department of Transportation, the Court determined that the law provided that department with jurisdiction to revoke a driver's license due to a recognition of the department having a special competency. The Court found that the law similarly designed the child abuse statute to have DHS decide issues presented in an action to correct a child abuse assessment report even though the issues may have been previously decided in a parallel court action.

Incorrect Application. The Court also found that the doctrine of issue preclusion was incorrectly applied in this case because the doctrine had been applied to prevent DHS from correcting the assessment report. The Court suggested that DHS could have instead used the district court decision as an aid to assist the agency in its goal of maintaining accurate records.

Conclusion. The Court concluded that "legislative policies and goals are best served by allowing the DHS to correct its own assessment of a child abuse report free from the doctrine of issue preclusion. The DHS should consider all timely claims of error by those who are the subject of a child abuse report and decide all issues presented by a correction request." Consequently, the decision of the district court was reversed and the case was remanded to DHS for a hearing on the request to correct the assessment report.

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